

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

PROCRAFT CABINETRY, INC.,)	
)	
Plaintiff/Counter-Defendant,)	
)	CIVIL ACTION NO. 3:17-cv-01392
v.)	
)	JURY DEMAND
SWEET HOME KITCHEN AND BATH, INC. <i>et al.</i>,)	
)	CHIEF JUDGE CRENSHAW
)	
Defendants/Counter-Plaintiffs/ Third-Party Plaintiffs,)	MAGISTRATE JUDGE FRENSLEY
)	
AND)	
)	
THE CABINET AND GRANITE DEPOT, LLC <i>et al.</i>,)	
)	
)	
Defendants,)	
)	
v.)	
)	
HUI CHEN <i>et al.</i>,)	
)	
)	
Third-Party Defendants.)	

MOTION TO STAY PENDING APPEAL

Pursuant to Fed. R. App. P. 8(a), Plaintiff ProCraft Cabinetry, Inc. (“Plaintiff”) moves for a Stay of the Order entered in this action on September 24, 2018 (Dkt. 363), and accompanying Judgment entered September 25, 2018 (Dkt. 364). With due respect to the Court’s decision to grant summary judgment on the basis that the Shareholders’ Agreement unambiguously applied to Plaintiff and that the only officer who was acting in the best interest of Plaintiff was not able not able to take legal action, a stay is necessary to pause a vote called for by Peter Huang and Jackey

Lin (two of the Defendants in this action) to remove Sophia Chen (who at a minimum the Court must agree is shareholder of Plaintiff), elect themselves as officers with Lin usurping Chen's role as President, and terminate Plaintiff's counsel even though Plaintiff has filed an appeal with the Sixth Circuit Court of Appeals. To permit this vote to occur while the appeal is pending would be an irreparable and irreversible harm to Plaintiff. In support of this Motion, Plaintiff submits Peter Huang and Jackey Lin's October 1, 2018, Special Meeting Notice (attached hereto as Exhibit 1) and contemporaneously files its Memorandum of Law ("Memorandum").

The Court's Order (Dkt. 363) dissolved the Temporary Restraining Order (Dkt. 87, "TRO") previously issued in this case. As a result, and as detailed in the Memorandum, Plaintiff is under an imminent threat of substantial and irreparable harm. The only means to maintain the status quo is a Stay pending Plaintiff's appeal. In deciding whether to grant this motion, the Court must consider four factors, all of which favor Plaintiff.

First, Plaintiff is certain to suffer substantial, immediate, and irreparable harm in the absence of a Stay. Peter Huang and Jackey Lin have undertaken the same unlawful activity previously enjoined, again noticing a special meeting where they will vote to remove and replace Sophia Chen, the sole shareholder and officer of Plaintiff, effectively stealing a company in which they have never had ownership rights in the first place. They will further vote to fire Plaintiff's counsel, and demand Chen cooperate and not interfere with their actions, which is the same as saying Plaintiff's appeal will be dismissed and any further litigation quashed no matter how wrongful or illegal Defendants' action (past, present, and future) may be.

Second, Plaintiff respectfully disagrees with the Court's determinations in this case and asserts it is likely to succeed on the merits of its appeal. Plaintiff asserts there is, in fact, ambiguity in the Shareholders' Agreement, or mutual mistake by the parties at the time of formation, both of

which make it clear that the parties intended to form a new company entirely separate from Plaintiff. Further, even if the Shareholders' Agreement is deemed to pertain to Plaintiff, which Plaintiff asserts it does not, Ms. Chen was authorized to unilaterally direct Plaintiff to bring this lawsuit against Huang and Lin as the only shareholder and officer acting in Plaintiff's best interests and not attempting to waive \$3 million in unpaid amounts due to Plaintiff and ignoring sales of infringing products by other entities.

Third, the harm, if any, to Huang and Lin will be insignificant and transitory. At the very worst, even if Plaintiff is unsuccessful on its appeal, Huang and Lin will carry on as they intend to now as though nothing ever happened, having lost only a few months' time.

Fourth and finally, the public interest will be served by a Stay. There is a strong public interest in fostering fair competition and discouraging unfair competition. Further, a stay serves the two primary purposes of trademark law – preventing consumer confusion and protecting the trademark owner's property interests in the mark. Finally, assuming the Shareholders' Agreement pertains to Plaintiff, which it does not, there is a fundamental public interest in protecting the fiduciary duties owed by an officer to a corporation as well as enforcing contractual duties.

A Stay is the only means for preserving the status quo pending Plaintiff's appeal. At the very least, the Court should immediately grant a temporary stay so Plaintiff can promptly make a similar motion in the Sixth Circuit Court of Appeals.

WHEREFORE, Plaintiff respectfully requests the Court issue a stay stopping any vote called for by Huang and Lin pending completion of Plaintiff's appeal before the Sixth Circuit Court of Appeals.

Respectfully submitted,

/s/ Samuel F. Miller

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of October 2018, the foregoing was served upon the Defendants represented by counsel via the Court's CM/ECF system. All other parties will be served via U.S. Mail, postage prepaid, and/or personal service as soon as practicable.

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